

REMARKS

This paper accompanies a request for continued examination.

Claim 1 has been amended to clarify that the method steps are directed to “detecting an application layer information access anomaly.” This limitation was believed to be inherent given the preamble wording but has now been made express. A similar limitation is already present in the body of independent claim 49. In addition, claim 1 has been amended to describe the “detecting” step as “using a semantic analysis,” which is the wording in claim 49. No new matter has been included.

Claim 3 has been amended to include a dependency from claim 1, as this limitation was inadvertently omitted from the prior amendment to this claim.

Independent claim 49 has been rewritten to recite an “apparatus” comprising a processor, and a computer memory storing program instructions that when executed by the processor carry out the recited method steps. This amendment is made to ensure that the claim is patent eligible under the Office’s current §101 guidelines. Dependent claims 42-45 and 47-48 have been amended to change their dependency (from method claim 1 to apparatus claim 49) to ensure that claims 42-45 and 47-48 claim only one statutory class.

Claims 1-29 and 40-51 are rejected under 35 USC §102(a) as being anticipated by the admitted prior art (APA). With respect, this rejection is traversed.

To be clear, Applicant has submitted claims that are believed to be patentable over the prior art. The prior art set forth in the written description might well be deemed “admitted prior art” but what matters here is whether the admitted prior art “reads on” the claimed invention, which it most certainly does not. Applicant is not seeking to patent the alleged APA. In this regard, the Examiner is reminded that “[e]very limitation positively recited in a claim must be given effect in order to determine what subject matter that claim defines.” *In re Wilder*, 429 F.2d 447, 450 (CCPA 1970); *See also In re Wilson*, 424 F. 2d 1382, 1385 (CCPA 1970) (“[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art.”). Moreover, in rejecting claims, 37 CFR §1.104(c)(2) requires that “the pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified.”

Here, the Examiner's summary conclusions that everything claimed is admitted prior art fails to meet the Office's burden under Rule 104(c)(2). Moreover, as the above precedent notes, each and every limitation in the claims is material to patentability.

Claim 1 includes at least the following subject matter that is neither disclosed nor suggested by the alleged APA:

“deriving a prototypical model that includes a frequency view of a set of content signatures accessed by a given user, where the set of content signatures are indicative of content that is changing over time; and

“detecting an application layer information access anomaly by using a semantic analysis to detect a given deviation from the prototypical model.”

Claim 49 includes at least the following subject matter that is neither disclosed nor suggested by the alleged APA:

“monitoring data packets indicative of changing content over time;

generating a prototypical model; and

performing a semantic analysis against the prototypical model to identify an application level information access anomaly.”

Once again, Applicant does not concede that these limitations are in the prior art, and the Examiner has failed to show that they are.

Alleged anticipation requires exact correspondence between a subject claim and the teaching of the reference. *Net MoneyIn, Inc. v. Verisign, Inc.*, 545 F.3d 1359, 1369 (Fed.Cir. 2008) (“unless a reference discloses within the four corners of the document not only all of the limitations claimed but also all of the limitations arranged or combined in the same way as recited in the claim, it cannot be said to prove prior invention of the thing claimed”). The Manual of Patent Examining Procedure (MPEP) § 2131, likewise, provides that a “claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. ... ‘The identical invention must be shown in as complete detail as contained in the ... claim.’” (emphasis supplied) Although the literal wording need not be found in the reference, the elements must be arranged as required by the claim.

The claimed subject matter must be disclosed "clearly and unequivocally" in the reference. *In re Arkley*, 455 F.2d 586, 587 (CCPA 1972). Moreover, anticipation is not established if, in reading a claim on something disclosed in a reference, it is necessary to pick, choose and combine various portions of the disclosure, which according to the teachings of the reference, are not directly related to each other. *Id.*, 455 F.2d at 587-88.

The prior art reference must describe every limitation in a claim either explicitly or inherently. *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997). Inherent anticipation, however, cannot be based on possibilities or probabilities. *Akamai Tech., Inc. v. Cable & Wireless Internet Serv., Inc.*, 344 F.3d 1186, 1192 (Fed. Cir. 2003) ("A claim limitation is inherent in the prior art only if it is necessarily present in the prior art, not merely probably or possibly present."); *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999) ("Inherent anticipation requires that the missing descriptive material is 'necessarily present,' not merely probably or possibly present, in the prior art").

Further, to be anticipatory, the reference must "enable one of ordinary skill in the art to make the invention without undue experimentation." *Impax Labs., Inc. v. Aventis Pharms. Inc.*, 545 F.3d 1312, 1314 (Fed. Cir. 2008); see *In re Paulson*, 30 F.3d 1475, 1478-1479 (Fed.Cir. 1994); *In re LeGrice*, 301 F.2d 929, 940-44 (CCPA 1962).

An anticipation rejection cannot be predicted on an ambiguous reference. Rather, disclosures in a reference relied on to prove anticipation must be so clear and explicit that those skilled in the art will have no difficulty in ascertaining their meaning. *In re Turlay*, 304 F.2d 893, 899 (CCPA 1962).

To establish anticipation, every element and limitation of the claimed invention must be found in a single prior art reference, arranged as in the claim. *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383 (Fed. Cir. 2001)

"Absence from the reference of any claimed element negates anticipation." *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 1571 (Fed.Cir.1986).

Here, the Examiner has not shown how either claim 1 or claim 49 is anticipated.

Further, the Examiner's duty under Rule 104 requires that a dependent claim-by-dependent claim analysis be carried out. The Applicant has not admitted that all elements in these claims are APA.

Reconsideration is requested.

Respectfully submitted,

/David H. Judson/

By: _____
David H. Judson, Reg. No. 30,467

ATTORNEYS FOR APPLICANT

November 11, 2009